

MORGANTOWN BOARD OF ZONING APPEALS

MINUTES

May 17, 2006

6:30 P.M.

City Council Chambers

Members Present: Nick Iannone, Jim Rockis, Mark Furfari and Jim Shaffer

Members Absent: Bernie Bossio

Staff Present: Chris Fletcher, Planning Director

MATTERS OF BUSINESS:

Approval of the minutes of April 19, 2006, was deferred to the next meeting

OLD BUSINESS: NONE

NEW BUSINESS:

- A. CU06-03 / Baehr / Highland Avenue:** Request by Fred Baehr for conditional use approval for zero lot line dwellings for property located on Highland Avenue. Tax Map #14, Parcels #197.2-197.3; an R-1-A Single-family Residential District.

Fletcher read the Staff Report stating that the January 3, 2006, zoning amendment introduced a new dwelling unit concept – zero lot line dwellings. Article 201 of the Zoning Ordinance provides the following definition: “DWELLING, ZERO LOT LINE – The location of a building on a lot in such a manner that one or more of the building’s sides rest directly on a lot line.” Table 300.05.01 provides that zero lot line dwellings are permitted as conditional uses in the R-1, R-1A, R-2, and R-3 districts.

Fletcher advised that, with the assistance and support of Staff, Mr. Baehr obtained approval from the Planning Commission on March 9, 2006, to record a minor parcel boundary adjustment for the subject realty. The intent of the adjustment was to create two conforming buildable lots for the purpose of constructing two (2) zero lot line attached dwelling units. In response to the Planning Commission’s decision, members of City Council expressed concern that Mr. Baehr’s proposed project did not meet the legislative intent for zero lot line dwellings. Noted concerns were – only detached zero lot line dwellings were intended and that this type of development pattern was not intended for infill development.

Fletcher explained that the following analysis discussed the zero lot line concept generally and Ordinance provisions specifically. Proponents argue that zero lot line allowances can promote creativity in site design; improve aesthetics of denser developments; increase density while ensuring a sufficient side yard; increase homeownership and affordable housing opportunities; etc. The January 3rd amendment

did not include a description or illustrative distinction between “detached” and “attached” zero lot line dwellings. Addendum B of the Staff Report includes five figures that, although not related to the City of Morgantown’s Zoning Ordinance, are generally accepted illustrations of specific dwelling types.

Fletcher clarified that because the Ordinance is silent in distinguishing between “detached” and “attached” zero lot line dwellings, Staff interpreted both to be acceptable where permitted. Again, Table 300.05.01 provides that zero lot line dwellings are permitted as conditional uses in the R-1, R-1A, R-2, and R-3 districts. Article 302.04 (R-1A – ‘Setbacks’), Article 303.05 (R-2 – ‘Encroachments into Setbacks’), and Article 304.04 (R-3 – ‘Setbacks’) awkwardly introduce “new undeveloped blocks” but the term “undeveloped blocks” is not defined in Article 201 of the Ordinance. Further, there are no zero lot line setback provisions established for the R-1A district.

Fletcher observed that, after consultation with the previous Planning Director following the Planning Commission’s approval of Mr. Baehr’s minor subdivision request, it became clear that Council’s intentions for the zero lot line dwellings were not accurately reflected in the January 3rd zoning amendment. It appears that the disjointed and conflicting zero lot line provisions included in the enacted amendment are most likely a result from oversight in reviewing the several draft revisions, particularly the final strikethrough/underline version.

Fletcher addressed some additional issues that should be considered when adopting zero lot line policies that were not provided in the January 3rd amendment:

- Require the developer to lay out all building envelope areas on the plat before any can be sold – this would ensure that buyers know which side the house must be built on and thereby avoid potential development conflicts between contiguous parcels.
- Requiring a mechanism to allow access to the side of the house on the lot line for regular maintenance – a perpetual wall maintenance easement of approximately four feet in width along the adjacent lot and parallel with such wall.
- Requiring an owner’s association or restrictive covenants to detail operation of common areas, insurance needs, and exterior appearance controls.

Fletcher added that City Council is expected to repeal conflicting zero lot line ordinance provisions and incorporate explicit development and performance standards on June 6th when they consider several Staff requested text amendments that were recommended by the Planning Commission on April 13, 2006. Based on apparent inconsistencies between intended policy and the enacted zoning ordinance amendment AND the fact that “two-family dwelling” units, as defined in Article 201, are not permitted in the R-1A district, Staff recommends that Mr. Baehr’s conditional use request be denied.

Fred Baehr, applicant, presented a drawing of the proposed structure and stated that he went to the City Planner and they talked about City ordinances and zero lot lines. He thought the zero lot line would enable the dwellings to look more like a home than two

separate apartments and they would blend in better with the neighborhood. This would eliminate the ten foot side yard setback, providing more living space and less crowding on either side of the house. It would still be two separate apartments, just pushed next to each other on two separate lots. He plans to have a balcony and each apartment would have a garage with additional off-street parking area. Building a single structure would be easier for the excavator as well as the builders. It would go up quicker and be more cost effective. R-1A zoning was specifically to keep the area for family dwellings, to supply children for the Wiles Hill School, which is now closed. The area is mostly rental because it is so close to the University. James Stewart, owner of three rental properties across the street, is in favor of this plan. Baehr read a letter from Zane Shook, owner of adjacent lots, endorsing the proposal. He listed the houses nearby and declared that this is essentially an undeveloped area.

Iannone asked for clarification that these would be apartments and if the driveway is shared.

Baehr responded that it would be rental property and that the driveway would be shared because of the way the property is situated.

Rockis asked how long he had lived there and spoke of the R-1A zoning concept.

Baehr stated that he has lived there since 1990.

Iannone asked for public comments.

Charley Byrer, corner of Highland and Raymond Street, has no problem with the zero lot line concept but is against a duplex. It is mostly residential, not rental, and we have a balance between residential and rental. He spoke of the school renovation for the BOPARC facility with a playground and that young families are looking for this type of neighborhood. R-1A is an attractive zoning protection for the city and we have a lot of neighborhood attractions for family residents. He asked that Mr. Baehr stay with the spirit of R-1A for two detached dwellings instead of a duplex.

Genevieve Baehr, 241 Highland Avenue, was concerned about the type of building being put up and favors this proposal. Two little apartments would not fit as well in the neighborhood as one single, larger building. Two smaller buildings would devalue the neighborhood and probably would not have the same aesthetic values.

Iannone asked for further public comments. There being none, the public portion was closed.

Board members discussed duplexes and apartments. Fletcher read the definition of a two-family dwelling from the ordinance and offered that the proposed development would be considered a two-family dwelling as defined. Because the ordinance does not distinguish between attached and detached zero lot line dwellings, the Baehr development is best classified under the zoning ordinance as a two-family dwelling; a type of dwelling that is not permitted by the land use table for the subject zoning district.

Fletcher recommended that a decision to deny the conditional use petition be made based on the definition of a two-family dwelling and not on the issue of legislative intent. It is up to City Council to clarify the policy. Fletcher also noted that tenancy should not be a part of the decision to approve or deny the petition.

The Board members and Fletcher discussed administrative appeal procedure and "Finding of Fact" questions and answers. Fletcher, after researching the issue, found that the concept of zero lot line dwellings was not intended to be used for infill development.

Motion was made by Furfari to accept Finding of Facts #1 through #7 as presented by the applicant with a separate vote on #8; second by Shaffer. Motion carried unanimously.

Motion by Shaffer to reject Finding of Fact #8 since two-family dwellings are not permitted in an R-1A district, second by Furfari. Motion carried unanimously.

Motion by Shaffer to deny the conditional use request based on the negative Finding of Fact #8, second by Rockis. Motion carried unanimously.

Rockis questioned allowing any existing building with a common wall in R-1A areas to be split into a zero lot line attached dwelling.

Fletcher replied that they are not allowed in R-1 and R-1A districts, but existing duplexes could be converted as was done with a previous case. Staff will recommend to City Council that conversions be allowed.

Baehr stated that he understood why two units on one parcel would be denied, but since he has two full-sized, legal lots, he thought he might be able to have two units. Baehr noted that C&S Rentals has five units on land the same size and 50 yards from his house, that have gone up in the last seven years or so.

Iannone noted that the R-2 boundary is very close to this property.

The order of Agenda items B and C was switched.

B. CU06-04 / Howland / 400 Forest Avenue: Request by Marie Howland of Clayken LLC for conditional use approval for a multi-family structure in an R-2 District at 400 Forest Avenue. Tax Map #29, Parcel #82; an R-2, Single and Two-Family Residential District.

Fletcher read the Staff report stating that the applicant seeks to develop a five-unit, multi-family structure at 400 Forest Avenue. Table 300.05.01 "Permitted Land Use Table" of the Zoning Ordinance lists "Multi-family Dwellings" as a Conditional Use in the R-2 District. The original structure, a three-unit multi-family building, fell into disrepair, was razed and removed. According to Code Enforcement, the surrounding properties are largely registered as rental units ranging from single-family to a quadraplex. A

majority of the structures are triplexes. A map illustrated occupancy trends of the area was attached to the Staff Report.

Fletcher explained that Article 401, Parking, Loading, and Internal Roadways, Table 401.04.01, Minimum Off-street Parking Requirements, of the Zoning Ordinance requires that each two-bedroom unit have 1.5 parking spaces and three-bedroom units have two parking spaces. The request is for four 2-bedroom units and one 3-bedroom unit. Therefore, the off-street parking requirement is eight spaces. The current site plan indicates nine off-street spaces (including one handicap), two accessible from Forest Avenue and seven from Baird. With the current proposal, the property owners have also applied for a variance from the required front yard setback.

Marie Howland, applicant, gave a PowerPoint presentation and reiterated points made in the Staff Report. She addressed property and B&O taxes, traffic, parking, and emergency vehicle concerns. It will be a new building with a sprinkler system and will meet the fire code. The building also fits within the character of the neighborhood.

Rockis complimented Ms. Howland on the presentation and asked her to explain development scale.

Howland defined it as being the same visually, with the same side setbacks and height, as other properties in the neighborhood.

Iannone asked for public comments.

Fred Baehr, 241 Highland Avenue, spoke in favor of the project.

Frank Ferrell, 26 Outlook Street, spoke of traffic congestion in the area, the medium density concept, parking, and encouraged four units instead of five for the building.

Colin Waddleworth, applicant's son, observed that BFI has no service problem with the streets and that the building can not be afforded with only four units.

Rockis questioned trash pickup.

Waddleworth pointed out the dumpster on the site plan.

Iannone asked for further public comments. There being none, the public portion was closed.

Fletcher advised that the surrounding neighborhood is primarily multi-family with a concentration. The transition to higher densities has certainly evolved due to its proximity to the downtown campus. The immediate area can be generally characterized as blighted where structures and open areas receive little to no general maintenance or upkeep. The architectural style of the proposed project is visually interesting, and of a quality significantly beyond the typical vinyl-sided box one might expect in a less-sensitive rehab. This type of project within the neighborhood would be a positive step in curbing declining conditions, enhancing the overall quality of life, and encouraging

improved maintenance and similar redevelopment. Most important, the project includes sufficient off-street parking; an amenity not provided by most surrounding uses.

Fletcher observed that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a conditional use by reaching a positive determination for each of the “Findings of Fact” submitted by the applicant. Staff believes the petitioner’s request is reasonable, concurs with the “Findings of Fact” as submitted by the applicant, and recommends conditional use approval of a multi-family structure contingent upon the following conditions:

1. The structure must be squared-off along the side nearest the annulment to conform to the characteristics of surrounding residential structures.
2. The applicant must return to the Technical Review Committee so that departments can evaluate the current site plan. Any significant changes to the site plan must receive BZA approval prior to the issuance of building permits.
3. The applicant must work with the solid waste vendor to determine the most efficient and effective location and means for garbage storage and removal. The applicant must document the agreed method and, if necessary, revise the site plan, to the satisfaction of the Planning Director, prior to building permit issuance. A revision may include the reconfiguration of rear off-street parking, so long as at least seven spaces are provided and meet the design requirements of the zoning ordinance.
4. A landscaping plan must be submitted and approved by the Planning Director prior to building permit issuance.

Rockis asked why the building was not squared originally.

Howland replied that they have to be ten feet from the sewer line, but they are not opposed to narrowing the front to square off the side.

Furfari asked if they could put additional parking on the annulled street.

Howland responded that they would have as much parking as possible.

Fletcher individually read each Finding of Fact and the applicant’s corresponding response. For Findings of Fact #1 through #8, Staff recommends that the BZA find in the POSITIVE by accepting the applicant’s response as submitted.

The Board voted upon each Finding of Fact after the individual reading.

Motion by Shaffer to find in the positive for #1, second by Furfari. Motion carried unanimously.

Amendment to #2 by Shaffer, adding “because of the area’s housing, the new structure, in meeting current building and fire codes, will most likely contain life and safety

amenities not available within surrounding units.” second by Furfari. Motion by Shaffer to find in the positive as amended, second by Furfari. Motion carried unanimously.

Motion by Furfari to find in the positive for #3, second by Shaffer. Motion carried unanimously.

Motion by Shaffer to find in the positive for #4, second by Furfari. Motion carried unanimously.

Motion by Shaffer to find in the positive for #5, second by Furfari. Motion carried unanimously.

Motion by Furfari to find in the positive for #6, second by Shaffer. Motion carried unanimously.

Motion by Shaffer to find in the positive for #7, second by Furfari. Motion carried unanimously.

Motion by Shaffer to find in the positive for #8, second by Furfari. Motion carried unanimously.

Motion by Shaffer to approve the request, second by Rockis. Motion carried unanimously.

C. V06-03 / Howland / 400 Forest Avenue: Request by Marie Howland of Clayken LLC for variance approval from Appendix A: Development Standards Table for property located at 400 Forest Avenue. Tax Map #29, Parcel #82; an R-2, Single and Two-Family Residential District.

Fletcher read the Staff report stating that the applicant seeks to construct a five-unit multi-family structure on the subject realty with a front yard setback of four feet. The proposed porch encroaches into the required front yard set forth in the “development Standards Table” (Appendix A) of the Zoning Ordinance. As such, the applicant requests a six foot variance as described in the following table.

Criteria	Standard	Proposed Conditions	Variance Request
Minimum Front Setback	10 ft.	4 ft.	6 ft.

Addendum A of the Staff Report illustrates the location of the subject realty and provides a general assessment of the approximate setback trends of neighboring structures.

Marie Howland, applicant, reiterated points made in the Staff Report.

Iannone asked for public comments. There being none, the public portion was closed.

Fletcher clarified that open and covered, but unenclosed, front porches attached to single-family dwellings or two-family dwellings in the R-2 district may extend, by right, into the required front setback up to five feet. Although this flexibility is not provided to multi-family structures within the zoning district, the proposed project has been designed to match the orientation of the surrounding structures, reflect their proximity to the street, and complement the general architectural character of the area. Specifically, the building is situated at ten feet but includes a six foot front porch that extends into the front yard. Several of the neighboring structures are similarly designed. As such, Staff believes that the petitioner's request is reasonable and that the proposed setback generally conforms to patterns established by neighboring structures.

Fletcher advised that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for each of the "Findings of Fact" submitted by the applicant. In reviewing the "Findings of Fact" submitted by the applicant, Staff offers the following comments:

Findings of Fact #1 – Staff recommends that this response be modified to incorporate the applicant's argument made in #3 by stating: "The configuration of the subject property is unique in that a variance would allow sufficient on-site parking to be provided at the rear, which is or cannot be provided by multi-family units within the immediate area due to lot coverage, topography and/or lot layout."

Findings of Fact #2 and #3 - Staff concurs as presented.

Findings of Fact #4 – Any new construction or additional occupancy within this general area will arguably impact traffic flow. In recognizing this fact, Staff recommends that the finding be revised as follows: "The proposed setback is consistent with the other properties on the street, and will allow sufficient space in the back for seven on-site parking spaces. These seven spaces plus the two on-site spaces in the front will ensure this project does not ~~increase~~ contribute to the traffic congestion and vehicular maneuvering limitations caused by neighboring multi-family structures that depend on on-street parking spaces. ~~In addition, it will in fact reduce some traffic because five additional apartments will be within walking distance to campus and downtown. Reducing the traffic that would be generated if these individuals had to drive to campus or the downtown area to shop. The project's targeted tenancy and its proximity to the downtown campus is expected to mitigate trip generation that is normally attributed to this type of development.~~ A new building on this site, whose design is in character of the neighborhood, will enhance property values.

Assuming the applicant obtains conditional use approval by the Board for a multi-family structure, Staff recommended approval of the variance with modifications to the "Findings of Fact" as noted in the Staff Report.

Fletcher individually read each Finding of Fact and the applicant's corresponding response. The Board voted upon each Finding of Fact after the individual reading.

Motion by Rockis to find in the positive as amended by Staff for #1, second by Shaffer. Motion carried unanimously.

Motion by Shaffer to find in the positive for #2, second by Furfari. Motion carried unanimously.

Motion by Shaffer to find in the positive for #3, second by Furfari. Motion carried unanimously.

Motion by Rockis to find in the positive for #4 as amended by Staff, second by Furfari. Motion carried unanimously.

Motion by Rockis to approve the conditional use with the conditions recommend by Staff, second by Shaffer. Motion carried unanimously.

D. V06-02 / Herod / 380 Spencer Street: Request by John and Rebecca Herod for a front yard setback variance for property located at 380 Spencer Street. Tax Map #41, Parcel #193; an R-1-A Single-Family Residential District.

Fletcher read the Staff report stating that the applicant seeks to construct a single-family detached dwelling on the subject realty with a front yard setback of 35 feet. This exceeds the maximum front yard setback requirement of 20 feet set forth in the “Development Standards Table” (Appendix A) of the Zoning Ordinance. As such, the applicant seeks a fifteen foot variance as described in the following table.

Criteria	Standard	Proposed Conditions	Variance Request
Maximum Front Setback	20 ft.	35 ft.	15 ft.

Addendum A of the Staff Report illustrates the location of the subject realty and provides a general assessment of the setback trends of existing structures along Spencer Avenue. Fletcher explained the colors on the map.

Rebecca Herod, applicant, concurred with the Staff Report.

Iannone asked for public comments. There being none, the public portion was closed.

Fletcher clarified that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for each of the “Findings of Fact” submitted by the applicant.

Staff believes that the petitioner’s request is reasonable, that the proposed setback generally conforms to the patterns established by existing dwellings along Spencer Avenue, and concurs with the “Findings of Fact” submitted by the applicant. As such, Staff recommends approval as requested.

Motion by Shaffer to accept all the Findings of Fact as presented, second by Rockis.
Motion carried unanimously.

Motion by Rockis to approve the variance request, second by Shaffer. Motion carried unanimously.

OTHER BUSINESS:

Public Comments: NONE.

Staff Comments: NONE.

ADJOURNMENT: 8:50 P.M.